

1 Q. And do you remember telling the worker there about
2 the, telling them, as you told this jury, that he held you
3 in the tub or put you in the tub, you recall that?

4 A. Yes, sir.

5 Q. And you said he did that to you almost every day?

6 A. Yes, sir.

7 Q. Put the handcuffs on you and put you in the tub and
8 held you down every day?

9 A. Yes, sir.

10 Q. But he didn't do that to Lillian, did he?

11 A. I don't remember. I don't know.

12 Q. Now when you and Lillian talked do you recall did she
13 remember that all this happened at nighttime after ya'll
14 were in bed that he'd come wake both of you up?

15 A. Yes, sir.

16 Q. Do you remember Lillian saying that?

17 A. Yes, sir.

18 Q. All right. So when ya'll talked Lillian would say
19 that it was at nighttime and ya'll were in bed and he'd
20 come wake you up and then these things would happen, do you
21 remember that?

22 A. Yes, sir.

23 Q. You do remember saying it, talking about that?

24 A. Yes, sir.

25 Q. That's all I have.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MR. GLANZER:

4 Q. This was supposed to be a secret, right?

5 A. Yes, sir.

6 Q. Who was it supposed to be a secret from, do you
7 remember?

8 A. I was supposed to keep the secret from my mom.

9 Q. From your mom?

10 A. Yes, sir.

11 Q. Who told you to keep it a secret?

12 A. Lee.

13 Q. Did he tell Lillian the same thing?

14 A. Yes, sir.

15 Q. Did ya'll talk about keeping it secret?

16 A. Yes, sir.

17 Q. When did you find out it wasn't a secret anymore?

18 A. When Lillie went to school one day and she talked to
19 the counselor about it.

20 Q. And where did that, was that in Virginia?

21 A. Yes, sir.

22 Q. Okay. Did you know that she was going to tell?

23 A. No, sir.

24 Q. Did your mom tell you that she had told or did
25 somebody else tell you that she had told?

1 A. I had my sister and my mom and my grandma had told me
2 that she told the secret and they asked me why I kept it
3 secret.

4 Q. Okay. And did you talk to some people up there in
5 Virginia?

6 A. Yes, sir.

7 Q. Did you tell them it happened up there?

8 A. Yes, sir.

9 Q. Did your mom tell you what to tell those people?

10 A. No, sir.

11 Q. Did your mom even know about the secret?

12 A. No, sir.

13 Q. It was a secret from your mom, right?

14 A. Yes, sir.

15 Q. Okay. When Lee would do these things to you, when he
16 would put his private part in your butt would you be on
17 your back or on your stomach?

18 A. I'd be on my back.

19 Q. On your back? Okay. Do you remember telling people
20 you'd be on your stomach?

21 A. I was on my stomach.

22 Q. Your stomach, okay. And where was your face?

23 A. My face was in a pillow.

24 Q. In a pillow?

25 A. Yes, sir.

1 Q. Okay. So he would be behind you? Could you see him?

2 A. No, sir.

3 Q. Were you mad at Lee after all this came out?

4 A. Yes, sir.

5 Q. While it was going on were you so mad at him that you
6 made this stuff up? Were you mad about something else?

7 A. No, sir.

8 Q. Were you mad about him punishing you for doing
9 something in school or not cleaning your room?

10 A. No, sir.

11 Q. Did you make any of this up?

12 A. No, sir.

13 Q. This all happened to you?

14 A. Yes, sir.

15 Q. Did you ever see him doing anything to Lillian?

16 A. No, sir.

17 Q. Did she ever say she saw him doing anything to you?

18 A. No, sir.

19 Q. Neither one of you saw what happened to the other one?

20 A. No, sir.

21 Q. When you talked about this balance beam, what do you
22 mean by a balance beam?

23 A. At my school there would be like a play ground and the
24 play ground had like a balance beam.

25 Q. Would that beam be up like this right here, high, or

1 would it be on the ground?

2 A. It'd be kind of towards the ground.

3 Q. On the ground? And how high would it be off the
4 ground?

5 A. About that much (indicating).

6 Q. About that far?

7 A. Yes, sir.

8 Q. Would it be actually laying on the ground?

9 A. No, sir.

10 Q. It would be a little bit up?

11 A. Yes, sir.

12 Q. And then you'd walk down it?

13 A. Yes, sir.

14 Q. And that's what you supposedly fell on? That's what
15 you said you fell on, right?

16 A. Yes, sir.

17 Q. But that was a lie, right?

18 A. Yes, sir.

19 Q. You said you, and you answered some questions from
20 them about making a -- you told them up there in Virginia
21 what happened?

22 A. Yes, sir.

23 Q. Did you remember telling them about a spanking, that
24 Lee spanked you with a belt?

25 A. Yes, sir.

1 Q. Was that true?

2 A. Yes, sir.

3 Q. He did that? And did you at that time tell them about
4 he would handcuff you and put you in the water?

5 A. Yes, sir.

6 Q. So you told them that too? Did you tell them that you
7 didn't know why he did that?

8 A. Yes, sir.

9 Q. Okay. Did you tell them at one point that you tried
10 to tell your mom?

11 A. Yes, sir.

12 Q. And that you didn't think she heard what you were
13 saying?

14 A. Yes, sir.

15 Q. And you did tell them that this thing with the tub
16 happened almost every day?

17 A. Yes, sir.

18 Q. And you didn't know whether he did that to Lillian, as
19 far as the handcuffs and the tub?

20 A. Yes, sir.

21 Q. So you told them that too? And then they asked if
22 you'd ever seen a man's private part and you said you
23 didn't think so. Do you remember doing a drawing for them
24 of a man's private part?

25 A. Yes, sir.

1 Q. Okay. Let me show you State's exhibit number four.
2 And does that drawing look familiar?

3 A. Yes, sir.

4 Q. Do you remember doing that up in Virginia?

5 A. Yes, sir.

6 Q. And do you remember drawing that yourself?

7 A. Yes, sir.

8 Q. And do you remember drawing that too, over here, can
9 you tell?

10 A. Yeah.

11 Q. Okay. And is that supposed to be Lee with his private
12 part?

13 A. Yes, sir.

14 Q. And is that supposed to be his private part?

15 A. Yes, sir.

16 MR. GLANZER: We'd offer State's four.

17 THE COURT: Admitted.

18 (WHEREUPON, the instrument hereinabove
19 marked for identification as State's
20 exhibit number four was admitted and
21 received into evidence.)

22

23 REDIRECT EXAMINATION RESUMED BY MR. GLANZER:

24 Q. So you had seen Lee's private part, right?

25 A. Yes, sir.

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1 Q. And then you did tell them about him putting his
2 private in your butt?

3 A. Yes, sir?

4 Q. And you told them that up in Virginia. And you told
5 them that his pie was located, I mean his private part was
6 located down where your pie is in the same place?

7 A. Yes, sir.

8 Q. And you told them that you would go to your mom in his
9 bedroom and that's where he would do that?

10 A. Yes, sir.

11 Q. And you told them up there that you had never fell on
12 that balance beam, that he had told you to tell them that?

13 A. Yes, sir.

14 Q. And you told them that your face would be on the
15 pillow and that you were on your stomach when he did that?

16 A. Yes, sir.

17 Q. And you told them that this would happen when your mom
18 was out of the house or at work?

19 A. Yes, sir.

20 Q. So you did tell them all that stuff you told them here
21 today?

22 A. Yes, sir.

23 Q. I have nothing further.

24 THE COURT: Recross?

25 RECROSS EXAMINATION

1 BY MR. FUNDERBURK:

2 Q. Autumn, one of the things you told them was that you
3 had not gone to a doctor when you had this injury that you
4 claim was on the balance beam. They asked you if you had
5 gone to a doctor and you said you had not gone to a doctor.
6 Do you recall telling them that? Do you know when you told
7 them that you had accidentally slipped and then you changed
8 your story and the lady up there asked you okay, and that's
9 why you were bleeding that day, and did you go to the
10 doctor that day or one of those couple of days, and you
11 said huh-uh. And you said you didn't go to the doctor
12 because Lillian thought you had been to a doctor. You
13 don't remember going to a doctor and you said no. And the
14 lady said no, she just guessed that. Now, do you recall
15 that you told them up there when they asked you these same
16 questions about your bleeding?

17 A. Yes, sir.

18 Q. That you did not go to a doctor?

19 A. The first day when he did that I never went to the
20 doctor.

21 Q. Well, you told the people when they talked to you up
22 there this year about this same problem like you've told to
23 the jury that you had never went to a doctor. You don't
24 remember telling them that?

25 A. No, sir.

1 Q. And they, you remember them asking you all the bad
2 things that Lee did to you?

3 A. Yes, sir.

4 Q. And you didn't tell them up there that he put his
5 winkie in your mouth either, did you?

6 A. No, I forgot to tell them that.

7 Q. Oh, okay. So you forgot to tell the person that took
8 all this down that part about him sticking his winkie in
9 your mouth, you forgot that?

10 A. Yes, sir.

11 Q. Well, when did you remember that after you talked to
12 this lady Milford up in Virginia?

13 A. What do you mean?

14 Q. Well, you forgot about it when you talked to her for
15 a long time. When did you remember that he had put his
16 winkie in your mouth?

17 A. I knew he did.

18 Q. Huh?

19 THE COURT: You want to take a little break?
20 Let's take a break, ladies and gentlemen. I'll let
21 ya'll go out to the jury room for a few minutes.
22 We'll come back and get started again shortly.

23 (WHEREUPON, proceedings were in a brief
24 recess, after which the jury returned to
25 the courtroom and the following occurred in

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their presence and hearing, to-wit:)

Funderburk.

questions. Thank you.

THE COURT: Mr. Glanzer, have you got any?

MR. GLANZER: Yes, sir.

FURTHER REDIRECT EXAMINATION

Q. Did he put your private part in your mouth?

A. Yes, sir.

THE COURT: Now we don't need to be repetitious.

Q. Do you recall whether anybody asked you that in Virginia?

A. No, sir.

Q. They didn't ask?

A. No, sir.

Q. Did they ask you here in Opelika?

A. Yes, sir.

Q. And did you tell them what happened?

A. Yes, sir.

Q. Just like today, you're answering our questions, right?

A. Yes, sir.

Q. Thank you.

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THE COURT: Any questions?

MR. FUNDERBURK: No further questions.

THE COURT: How old are you now, Autumn?

THE WITNESS: I'm nine.

THE COURT: Huh?

THE WITNESS: I'm nine.

THE COURT: Nine years old?

THE WITNESS: Yes, sir.

THE COURT: Okay. All right. You can step down.

Next witness.

MR. GLANZER: Lillian McLees.

THE COURT: Okay. You're Lillian?

THE WITNESS: Yes, sir.

THE COURT: What's your full name, Lillian?

THE WITNESS: Diane Lillian McLees.

THE COURT: Do they call you Lillie or what?

THE WITNESS: Lillie, yes, sir.

THE COURT: They do? Let's see if we can get
that a little closer so we can hear you a little bit
better.

All right. How old are you, Lillie?

THE WITNESS: Ten.

THE COURT: Ten years old?

THE WITNESS: Yes, sir.

THE COURT: Okay. I tell you what we're going to

1 do. Now we're going to ask you some questions. Have
2 you ever been in a courtroom before?

3 THE WITNESS: I've been in a grand jury room.

4 THE COURT: Okay. You've seen some court things
5 on TV though, haven't you?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. We're going to need to ask you
8 some questions and you need to talk good and loud for
9 us. Can you do that?

10 THE WITNESS: Yes, sir.

11 THE COURT: Now I'm going to give you an oath so
12 raise your right hand for me.

13 DIANE LILLIAN McLEES,

14 a witness, having first been duly sworn to speak the truth,
15 the whole truth and nothing but the truth, was examined and
16 testified as follows, to-wit:

17 THE COURT: Now you know the difference between
18 telling the truth and telling something that's not
19 true, don't you?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. And you're going to tell us
22 the truth today, right?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. Now I want you just to
25 answer the questions for these gentlemen as they ask

THE WITNESS: Yes, sir.

BY MR. GLANZER:

Q. Make new friends?

1 A. Yes, sir.

2 Q. At some point did you tell one of your friends
3 something that was supposed to be a secret?

4 A. Yes, sir.

5 Q. And what was the secret?

6 A. That William Lee Kirby touched me.

7 Q. Okay. And who was that a secret from? Who were you
8 trying to keep that secret from?

9 A. My mom. We didn't want her to get upset.

10 Q. And did you try to keep the secret from everybody else
11 too?

12 A. Yes, sir.

13 Q. Okay. Did anybody tell you to keep it a secret?

14 A. No, sir.

15 Q. Okay. Just --

16 A. Oh, yes. He did, sir.

17 Q. He did? Okay. What did he tell you if you told, what
18 would he do?

19 A. If my mom and him got back together he would do it
20 even harder.

21 Q. He would do it harder? So you decided you weren't
22 going to keep the secret anymore?

23 A. Yes, sir.

24 Q. Who did you tell?

25 A. I told my counselor at school.

1 Q. Okay. And then what happened?

2 A. And then these two cops came to my school and asked me
3 some questions.

4 Q. And then did you go talk to someone else?

5 A. There was two people at my school at the same time,
6 they were asking me questions.

7 Q. At sometime did you come back to Opelika and tell
8 somebody here?

9 A. Yes, sir.

10 Q. Was that Brenda Moss?

11 A. I don't know her name. I forgot.

12 Q. Somebody you told the whole story to?

13 A. Yes, sir.

14 Q. And you told the story up in Virginia too; right?

15 A. Yes, sir.

16 Q. What was the secret again now, tell me?

17 A. That he touched me in ways I didn't like.

18 Q. Okay. What ways were those, can you tell us?

19 A. Yes, sir.

20 Q. Okay. What did he do? Would he touch you with his
21 private part?

22 A. Yes, sir.

23 Q. Okay. And do you have private parts?

24 A. Yes, sir.

25 Q. And how many private parts?

1 A. We have three.

2 Q. Okay. And can you tell where they're located?

3 A. The chest area, the low part of your body and then
4 your back.

5 Q. Here and then back here?

6 A. Uh-huh. (Affirmative response.)

7 Q. Okay. Three parts. Would Lee touch all three parts?

8 A. He would only touch two of them.

9 Q. Only two of them? And which two would he touch?

10 A. The lower part and the back.

11 Q. The back and the front of the lower part? And what
12 would he touch that with?

13 A. His private part.

14 Q. His private part? When you say touch, do you mean
15 touch or do you mean more than touch?

16 A. Sometimes more than touch.

17 Q. And when you say more than touch, say for the back
18 part, what do you call that?

19 A. Your butt.

20 Q. Butt? And what do you call the front?

21 A. Pie.

22 Q. Pie? When he touched your butt with his private part
23 what would he do?

24 A. He'd just touch me.

25 Q. Would he just touch or would he do more?

1 A. He would do more.

2 Q. And how would he do more? What would he do?

3 A. He would do --

4 Q. Would he put it inside you?

5 A. Yes, sir.

6 Q. Okay. And how would that feel?

7 A. It would hurt.

8 Q. Okay. Would it hurt in the back and the front?

9 A. Yes, sir.

10 Q. Did he put it in both?

11 A. Yes, sir.

12 Q. Did he put it in the back part one time or more than
13 once?

14 A. More than once.

15 Q. Twice?

16 A. More than that.

17 Q. A whole lot?

18 A. Yes, sir.

19 Q. Okay. What about the front?

20 A. More than once.

21 Q. More than once? More than twice?

22 A. Yes, sir.

23 Q. Did he ever put it in your mouth, his private part?

24 A. (Witness nodding affirmatively.)

25 Q. Did anything ever come out?

2025 RELEASE UNDER E.O. 14176

1 A. (Witness nodding affirmatively.)

2 Q. What came out?

3 A. White stuff.

4 Q. White stuff? Okay. Was it in your mouth when the
5 white stuff came out?

6 A. Sometimes.

7 Q. So he did that more than once too?

8 A. (Witness nodding affirmatively.)

9 THE COURT: Lillie, I tell you what I want you to
10 do for me. See, this man right here has to write down
11 what you say?

12 THE WITNESS: Yes, sir.

13 THE COURT: And when you get a question asked
14 instead of just nodding your head you need to say
15 either yes or no so he can write it down for me. Can
16 you do that?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay.

19 Q. Did he ever punish you?

20 A. Yes, sir.

21 Q. And what kind of punishment would he do?

22 A. Sometimes he would ground us.

23 Q. Ground you?

24 A. Yes, sir.

25 Q. Okay. Did he ever do any punishment type thing in the

1 bath tub?

2 A. Oh, yes, sir.

3 Q. And what kind of thing would he do?

4 A. He would dunk our heads in the water.

5 Q. Dunk your head under the water?

6 A. (Witness nodding affirmatively.)

7 Q. And what kind of thing would you do wrong to have that
8 happen?

9 A. I don't know.

10 Q. Did he ever say you did bad at school, bad at home or

11 --

12 A. Yes, sir.

13 Q. He'd just do it?

14 A. Yes, sir.

15 Q. And these things he did, did they all happen here in
16 Opelika?

17 A. Yes, sir.

18 Q. Did anything ever happen in Virginia?

19 A. No, sir.

20 Q. Just here?

21 A. Yes, sir.

22 Q. Do you remember what grade you were in when that
23 happened?

24 A. Second grade.

25 Q. Second grade? Nothing further.

CROSS EXAMINATION

BY MR. FUNDERBURK:

Q. Lillian, my name is Kenneth Funderburk and I'm going to ask you a few questions. If you don't understand it let me know and I'll try to ask it where you can understand it.

A. All right. Do you remember when you were up in Virginia and you told the secret like you told Mr. Glanzer?

A. Yes, sir.

Q. And do you recall they took you to a doctor?

A. Yes, sir.

Q. And did a doctor examine you?

A. Yes, sir.

Q. Did he examine your front and it may have been a woman, I don't know.

A. It was a woman.

Q. All right. Did she examine you in the front and the back?

A. She did it with a computer or something to that effect, where it would take pictures of it.

Q. Took pictures of the examination?

A. Yes, sir.

Q. And you remember that she didn't find anything wrong with either your back part or your front part?

A. Yes, sir.

Q. That's true, isn't it?

1 A. Yes, sir.

2 Q. And you know that because you've talked about it with
3 your mother?

4 A. Yes, sir.

5 Q. And the doctor told you that?

6 A. Yes, sir.

7 Q. That he didn't find anything wrong with your front
8 side or your back side; right?

9 A. Yes, sir.

10 Q. These things that happened that you've told the jury
11 about and that you've told other people, these workers who
12 have talked to you?

13 A. Yes, sir.

14 Q. Did those things happen at nighttime or at daytime?

15 A. A lot in the morning time, it looked like nighttime.

16 Q. Excuse me, I missed that. When?

17 A. In the morning time but it looked like nighttime
18 outside.

19 Q. Did them in the morning time but don't you remember
20 telling everybody that this happened at nighttime?

21 A. Yes, sir. But it looked like nighttime outside.

22 Q. Well, how did it look like morning time when it looked
23 like nighttime? How did it that happen?

24 A. It was black outside.

25 Q. And all this, every time he would do it to you it

2 | A. Yes, sir.

6 | A. Yes, sir.

11 | A. Yes, sir.

13 A. Yes, sir.

16 | A. Yes, sir.

20 A. Yes, sir. I told them it looked like nighttime
21 outside.

25 A. I just told her a few minutes ago.

1 Q. Oh, just a couple of minutes ago? When did you and
2 Autumn talk about the change in time?

3 A. We didn't know. We just, in Alabama we would talk.

4 Q. Okay. Do you recall telling the lady that talked to
5 you that you thought this happened when your mother worked
6 on the night shift?

7 A. Yes, sir. And she said she never worked on the night
8 shift, she worked in the morning time.

9 Q. Oh, okay. So after you had made this statement you
10 talked to your mother and your mother straightened you out
11 and told you she had never worked at the night shift?

12 A. Yes, sir.

13 Q. So then it couldn't have happened at night, could it?

14 A. No, sir.

15 Q. And what else did you talk to your mother about to
16 straighten out your story?

17 A. I didn't talk anything else.

18 Q. But you knew it was a problem when you said it was the
19 night shift because she had never worked on a night shift?

20 A. Yes, sir.

21 Q. And then you said that Lee, this is what you told the
22 lady, that Lee would wake you up, you and Autumn, when they
23 were sleeping in their bedrooms and that's when these
24 things occurred, do you recall?

25 A. Yes, sir.

1 Q. Now what time did ya'll get up in the mornings?

2 A. I don't know.

3 Q. So where was your mother whenever --

4 A. She was out --

5 Q. -- we know from what you've told us that it looked
6 like nighttime, right?

7 A. Yes, sir.

8 Q. And when it looked like nighttime where would your
9 mother be?

10 A. At home.

11 Q. All right. Well, you were at home too, weren't you?

12 A. Yes, sir.

13 Q. So where was she when all this was supposed to have
14 happened? If she was at home and Lee was at home and you
15 were at home?

16 A. No. In the morning time. She was gone at work. At
17 nighttime she was at home.

18 Q. Well, what time would she go to work?

19 A. I don't know.

20 Q. Did your mother work all the time?

21 A. Yes, sir.

22 Q. And did Lee work all the time?

23 A. At Radio Shack.

24 Q. Was he home more than your mother?

25 A. I don't know.

1 Q. But your mother worked all the time and Lee worked all
2 the time? Did Lee work at night?

3 A. I really don't know.

4 Q. So now if he woke you up and it wasn't at night it
5 would have to be in the morning time?

6 A. Yes, sir.

7 Q. If it was morning time your mother would have to be
8 home; right?

9 A. Yes, sir.

10 Q. And Lillian, I hate to ask you that again, but we need
11 to be clear on this because of what you're saying. You
12 told people that this happened only at nighttime when your
13 mother was on a night shift and that Lee would come in and
14 wake you and Autumn up and that's when this would happen;
15 right?

16 A. Yes, sir.

17 Q. Now if it was not at nighttime it would have to be in
18 the morning time and your mother would have been home?

19 A. She was not home though.

20 Q. Then it must not have been in the morning time, right?

21 A. She went to work in the morning.

22 Q. Before the sun came up?

23 A. Yes, sir.

24 Q. It was dark when she went to work?

25 A. Yes, sir.

1 Q. Do you know what time she would have gone to work in
2 the mornings when it would be dark and she would not be
3 there in the morning time?

4 A. No, sir.

5 Q. Where was she working?

6 A. I don't remember.

7 Q. Do you think she went to work before say six in the
8 morning and --

9 A. Yes, sir.

10 Q. Do you think she went to work before five in the
11 morning when it was really dark?

12 A. In the morning, she was at work.

13 Q. I wrote something down here and I probably wrote it
14 wrong. Did I hear you say that he told you if he and your
15 mother didn't get back together that he was going to do it
16 harder? Is that what he said?

17 A. (Witness nodding affirmatively.) (Witness crying.)

18 THE COURT: Do you need a little Kleenex there to
19 wipe your eyes with? Do you need to take a break or
20 are you okay?

21 THE WITNESS: I'm okay.

22 THE COURT: You okay? Okay. You need some
23 water? You need a drink of water? Okay.

24 Q. You're going to have to answer my questions, but if
25 you're not now let me know because I don't want to ask you

1 a question and you don't feel like answering it.

2 What I'm trying to see is, did Lee tell you if he
3 and your mother didn't get back together that he was going
4 to do it harder?

5 A. No, if my mom and him got back together he would do it
6 harder to me.

7 Q. Okay. So when did he, this was after he and your
8 mother separated?

9 A. This was when he was doing these things to us.

10 Q. Were he and your mother separated at that time though?

11 A. No, sir.

12 Q. So he and your mother were living together, so why
13 would that have come up, that he and she were not getting
14 along? Was there a problem between he and your mother?

15 A. No, sir, not that I know of.

16 Q. Except your mother thought you liked Lee but you
17 didn't?

18 A. Yes, sir.

19 Q. Do you remember saying that? Do you remember when Lee
20 came to see Pookie?

21 A. Yes, sir.

22 Q. Pookie is his daughter?

23 A. Yes, sir.

24 Q. And where does Pookie live now?

25 A. In our house.

1 Q. And where is that?

2 A. Virginia Beach. Chesapeake, Virginia.

3 Q. All right. And I didn't ask that right. What I mean
4 is, are you living with your mother or are you living with
5 your grandmother?

6 A. My grandparents.

7 Q. Huh?

8 A. My grandparents.

9 Q. Okay. And what are their names?

10 A. Princess Hepner and Robert Hepner.

11 Q. And where does your mother live?

12 A. With my stepdad.

13 Q. Okay. Now, you've live with your grandmother ever
14 since ya'll went to Virginia?

15 A. My mom was living there too but then she got married.

16 Q. Okay. And so she's not living -- you're not living
17 with your mother?

18 A. No, sir.

19 Q. Did ya'll have a good time when you went up, when Lee
20 came up to see you earlier this year?

21 A. No, sir.

22 Q. Did you have a problem when he was there?

23 A. Yes, sir.

24 Q. What was your problem?

25 A. We really didn't want to see him.

1 Q. Well, did he ask to see you or your mother just
2 brought you or what happened there?

3 A. He came up.

4 Q. Uh-huh.

5 A. He came from Alabama to Virginia.

6 Q. Uh-huh.

7 A. To see Pookie.

8 Q. All right.

9 A. And we didn't want to see him.

10 Q. Okay. Well, why did you see him?

11 A. Because, I don't know.

12 Q. Did your grandmother take you to see him?

13 A. Yeah, my grandparents and my mom.

14 Q. Uh-huh. And did ya'll walk around the mall for a
15 while?

16 A. Yes, sir.

17 Q. And did you hug his neck?

18 A. Huh?

19 Q. Did you hug his neck?

20 A. I hugged him.

21 Q. And did ya'll get along just fine while he was there?

22 A. Yes, sir.

23 Q. And you decided after then that this wasn't a secret?
24 It was after then?

25 A. Yes, sir.

1 Q. And you felt like he hurt your mother?

2 A. Yes, sir.

3 Q. And you feel like he hurt your mother because he
4 married again, don't you?

5 A. No, sir.

6 Q. When do you feel like he hurt your mother?

7 A. When he hit her.

8 Q. And when did he hit her?

9 A. I don't remember but he hit -- night -- well, whatever
10 to me his Aunt Kara came to our house and when he hit her.

11 Q. All right.

12 A. And she stopped the fight.

13 Q. Say that again. She did what?

14 A. And she stopped the fight between them.

15 Q. Oh, okay. And when was that?

16 A. I don't remember but it was sometime when we wanted to
17 live with my grandmother.

18 Q. All right. And I believe one of the things you've
19 said is that you were in the second grade when all this
20 happened?

21 A. Yes, sir.

22 Q. No problem before then and no problem after then?

23 A. No, sir.

24 Q. And you mentioned that this even happened after Autumn
25 moved to Virginia. Did Autumn move back to Virginia before

1 you?

2 A. Oh, yes, sir, because I had summer school.

3 Q. Excuse me. I'm having a hard time hearing, when I
4 flip my pages. Say that again.

5 A. Yes, sir. I had summer school so I had to stay
6 behind.

7 Q. All right. And she went on to live with your
8 grandparents?

9 A. For summer, for the summer, to visit them.

10 Q. Uh-huh.

11 A. And then something happened and we eventually stayed
12 up there.

13 Q. Okay. When she went up there in the summertime and
14 you were down here with your mother?

15 A. Yes, sir.

16 Q. Did Autumn stay in Virginia?

17 A. Yes, sir.

18 Q. And then you and your mother moved there and Pookie
19 moved there later?

20 A. No. Pookie went up with Autumn.

21 Q. All right. Pookie went up with Autumn. And ya'll
22 went up, they went up to their grandparents?

23 A. Yes, sir.

24 Q. And you stayed here with your mother?

25 A. Yes, sir.

1 Q. And at that time were you still living with Lee?

2 A. Yes, sir.

3 Q. All right. So you think Autumn was up there several
4 months before ya'll moved up there?

5 A. Yes, sir. I had to finish summer school.

6 Q. You were still in second grade?

7 A. Yes, sir.

8 Q. And you had to finish the school?

9 A. Yeah, I had to finish summer school.

10 Q. Oh, you were in summer school?

11 A. Yes, sir.

12 Q. Okay. Do you remember when ya'll, I say ya'll, I mean
13 you, and the family moved to Virginia, stayed there a while
14 and came back, do you remember that? If you don't that's
15 fine.

16 A. No, sir.

17 Q. Well, what you can remember -- let me ask it this way:
18 Do you recall when Pookie was born?

19 A. Yeah, I went up there once with my grandfather.

20 Q. Uh-huh.

21 A. And then I came back down and then it was summertime,
22 then my sister, two sisters went up and then I finished up
23 summer school and then I went up there with my mom.

24 Q. All right. You don't, if you don't, and I don't know
25 what age you may have been, you don't recall during this

1 time having living -- you were living in Virginia and Lee
2 lost his job and you came back down here and he got a job
3 here, do you recall that?

4 A. Yes, sir. I'm sorry.

5 Q. Was that when you were in the second grade?

6 A. I don't know what grade I was in.

7 Q. If you don't remember. When you came back that time
8 were you living in the trailer or living with Lee's daddy
9 some of the time?

10 A. We lived here a couple of times so I don't remember
11 which one. At least once we were living with his dad.
12 Then once we got a trailer.

13 Q. Okay. Now Lillian, knowing what the doctor said, that
14 there was nothing wrong with either your front part or your
15 back part, and knowing that you don't know whether it was
16 nighttime or daytime, do you still tell the jury that
17 almost every day that Lee was doing something like that to
18 you, he was beating you, right, every day?

19 A. What?

20 Q. Was he beating you or whipping you every day?

21 A. If we did something wrong he would spank us but not
22 almost every day.

23 Q. All right.

24 A. But he was touching us almost every day.

25 Q. Almost every day and touching, you've already told the

1 jury what that means, almost every day. He was putting his
2 private part in your private part?

3 A. Yes, sir.

4 Q. In both the front and the back?

5 A. Yes, sir.

6 Q. And knowing that the doctor didn't find anything wrong
7 with you in those two places do you still say that he was
8 putting his private part in your private part?

9 A. Yes, sir.

10 Q. Now is there anything else you'd like to change? I've
11 gone over your statement with you. Anything else you want
12 to change in your statement?

13 A. No, sir.

14 Q. Except it didn't happen at nighttime like you told
15 them.

16 A. No, sir.

17 Q. And he didn't -- but he did come in and wake both of
18 you up; right?

19 A. He woke one person up.

20 Q. One person at a time?

21 A. Yes, sir.

22 Q. So all this happened then, in other words, the same
23 time of day he was doing something to you every day he'd be
24 doing something to Autumn almost every day?

25 A. Different times. Different times.

1 Q. Different times of the day?

2 A. Yes, sir.

3 Q. When would he do something to Autumn?

4 A. I don't know, she never told me. But she did tell me
5 that he was touching her.

6 Q. Well, she did tell you that everything that happened
7 to her was in the daytime though, right?

8 A. I don't know. I can't remember.

9 Q. I believe that's all I have, Your Honor.

10 THE COURT: Any other questions?

11 REDIRECT EXAMINATION

12 BY MR. GLANZER:

13 Q. Do you recall something about when you maybe got in
14 trouble or something Lee would give you options?

15 A. Yes, sir.

16 Q. What did that mean?

17 A. He would either do it to us or spank us and stand us
18 in the corner with weights.

19 Q. Okay. So he would give you a choice of being spanked
20 or him doing something to you?

21 A. Yes, sir.

22 Q. And what do you mean by doing something to you?

23 A. Putting his private part in my private parts.

24 Q. Putting his private parts in you?

25 A. Yes, sir.

1 Q. Okay. Did he give you a choice every time or what?

2 A. Sometimes. I don't remember if he gave it to us every
3 time.

4 Q. Okay. Sometimes you wouldn't get a choice?

5 A. Sometimes we would.

6 Q. Okay. Can you describe what his private part was
7 like? Was it soft or hard?

8 A. I can't remember.

9 Q. You can't remember? Okay. Where did he usually take
10 you when --

11 A. In the living room or the bedroom. Not our bedroom
12 but my mom's and his.

13 Q. Okay. When would he take you to the living room?
14 Would somebody be in the bedroom?

15 A. I don't know.

16 Q. He'd just take you there?

17 A. Yes, sir. He would just take us in either room.

18 Q. Do you know if on any of these times when it happened
19 that anybody saw what was going on other than the two of
20 you?

21 A. No, sir.

22 Q. So it was always in private?

23 A. Yes, sir.

24 Q. And told to keep it a secret?

25 A. Yes, sir.

1 Q. Did your mother say anything or you say anything to
2 your mother, either one, before you finally said something
3 in Virginia?

4 A. No, sir.

5 Q. Did your mother, as far as you know, know anything
6 about it?

7 A. She asked us if anything ever happened.

8 Q. Did you tell her?

9 A. No, sir. Not until --

10 Q. But after you told in Virginia then you talked to her?

11 A. Yes, sir.

12 Q. Did she ever tell you to say those kinds of things?

13 A. No, sir.

14 Q. Did anybody tell you to say those kinds of things?

15 A. No, sir.

16 Q. Did they actually happen?

17 A. Yes, sir.

18 Q. When you talk about nighttime are you just saying that
19 it was dark?

20 A. Yes, sir.

21 Q. And you don't know actually when it was, other than it
22 was dark?

23 A. Yes, sir.

24 Q. And the part about he would do it harder, wasn't that
25 have to do with if you didn't keep a secret?

1 Q. Did your mother say anything or you say anything to
2 your mother, either one, before you finally said something
3 in Virginia?

4 A. No, sir.

5 Q. Did your mother, as far as you know, know anything
6 about it?

7 A. She asked us if anything ever happened.

8 Q. Did you tell her?

9 A. No, sir. Not until --

10 Q. But after you told in Virginia then you talked to her?

11 A. Yes, sir.

12 Q. Did she ever tell you to say those kinds of things?

13 A. No, sir.

14 Q. Did anybody tell you to say those kinds of things?

15 A. No, sir.

16 Q. Did they actually happen?

17 A. Yes, sir.

18 Q. When you talk about nighttime are you just saying that
19 it was dark?

20 A. Yes, sir.

21 Q. And you don't know actually when it was, other than it
22 was dark?

23 A. Yes, sir.

24 Q. And the part about he would do it harder, wasn't that
25 have to do with if you didn't keep a secret?

1 A. Yes, sir.

2 Q. So the part about getting back together had nothing to
3 do with keeping the secret, did it?

4 A. I don't know.

5 Q. Okay.

6 A. He just said that.

7 Q. If he didn't, if you didn't keep a secret he would do
8 it harder?

9 A. Yes, when, if they got ever back together.

10 Q. If they got back together?

11 A. Yes, sir.

12 Q. If they didn't get back together he wouldn't be
13 around?

14 A. Yes, sir.

15 Q. Your mother has married, hasn't she?

16 A. Yes, sir.

17 Q. Okay. So she doesn't care about him, right?

18 A. No, sir.

19 Q. Nothing further.

20 THE COURT: Mr. Funderburk?

21 MR. FUNDERBURK: Yes, sir, Your Honor.

22

23 RECROSS EXAMINATION

24 BY MR. FUNDERBURK:

25 Q. Now Lillie, when he told you, and I think I asked you

1 something similar to this a while ago, if they got back
2 together and you told the secret he was going to punish you
3 harder?

4 A. Yes, sir.

5 Q. So when he told you that they were not living
6 together?

7 A. They were living together.

8 Q. Excuse me, what?

9 A. They were living together.

10 Q. They were living together? So why would he have told
11 you if they get back together if they were living together?

12 A. But if they ever got separated and they got back
13 together again then he would do it harder if we ever told.

14 Q. Well, when did your mother ask you if anything ever
15 happened?

16 A. She asked us a lot but we didn't have the courage to
17 tell her.

18 Q. She asked you a lot when you were down here or a lot
19 up in Virginia?

20 A. A lot down here.

21 Q. All right. About every day she'd ask you?

22 A. I don't know. I don't remember.

23 Q. When you got to Virginia did she ask you?

24 A. I don't think so. I don't know.

25 Q. Now did you ever see Lee do anything wrong to Autumn?

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1 A. Never. She told me that he did stuff to her, but I
2 never seen.

3 Q. That's what I'm asking, Lillian. Did you ever see Lee
4 do anything wrong to Autumn?

5 A. No, sir.

6 Q. Never saw him throw her up against the wall by the
7 throat?

8 A. I don't remember.

9 Q. Never saw him handcuff her?

10 A. I can't, I don't remember.

11 Q. Never saw him do anything wrong, did you?

12 A. I don't remember.

13 Q. That's all I have, Your Honor.

14 THE COURT: Anything else?

15 MR. GLANZER: Nothing further.

16 THE COURT: All right. You can step down and
17 step back inside.

18 Next witness?

19 MR. GLANZER: Dawn Beheshtzadeh.

20 THE REPORTER: Pardon?

21 MR. GLANZER: Dawn Beheshtzadeh.

22 THE COURT: Raise your right hand for me, please.

23 DAWN BEHESHTZADEH,

24 a witness, having first been duly sworn to speak the truth,
25 the whole truth and nothing but the truth, was examined and

1 testified as follows, to-wit

2 DIRECT EXAMINATION

3 BY MR. GLANZER:

4 Q. What is your name?

5 A. Dawn Marie Beheshtzadeh.

6 THE COURT: Spell your last name for us, please?

7 THE WITNESS: B-E-H-E-S-H-T-Z-A-D-E-H.

8 Q. Autumn and Lillian have just testified and do you know
9 them?

10 A. Yes, sir.

11 Q. And how do you know them?

12 A. They're my daughters.

13 Q. And do you know William Lee Kirby?

14 A. Yes, sir.

15 Q. And is he in the courtroom? Could you point him out?

16 A. Yes, sir. (Witness indicating).

17 Q. And you're pointing at the individual in the white
18 shirt?

19 A. Yes, sir.

20 Q. How do you know him?

21 A. I was dating him for a while.

22 Q. About how long did you date him?

23 A. Roughly about four years.

24 Q. And at some point did ya'll live together?

25 A. Yes, sir.

1 Q. And about how long was that?

2 A. Roughly about four years.

3 Q. And do you remember the approximate years during that
4 period?

5 A. I want to say in '92 or '93 we started living
6 together. We had a daughter together in '95. I moved back
7 home for about six months and then I came back here and I
8 moved back home again in, I guess it was '98, I think.

9 Q. Could it have been the summer of '99?

10 A. Yeah, it could have been the summer of '99.

11 Q. During '98 to '99 who lived together, who was in that
12 residence?

13 A. Mr. Kirby, myself, my oldest Lillian, Autumn Rose and
14 Elizabeth Nicole.

15 Q. Okay. And you mentioned you had one child with Mr.
16 Kirby?

17 A. Yes, sir.

18 Q. And is that Elizabeth?

19 A. Yes, sir.

20 Q. How old is she now?

21 A. She's five.

22 Q. What kind of -- how would you describe the, I guess
23 the relationship that you had with Mr. Kirby and did it
24 change over time, maybe put it that way?

25 A. It was a rushed relationship. I found out I was

1 pregnant and it had been really quick. I was already a
2 single mother and he was very young.

3 Q. When you say he was young, what was the difference in
4 your ages?

5 A. We're two years different.

6 Q. And when you say he was very young, about how old was
7 he?

8 A. 20, I believe, or 19.

9 Q. Okay. And that's when the relationship started?

10 A. Yes, sir.

11 Q. Was the relationship okay to start with?

12 A. It was a rushed relationship, it was okay, yes, sir.

13 Q. And I know this is difficult for you, but the sexual
14 relationship, how was that?

15 A. It started normal. We'd experiment.

16 Q. Did at some point did it change? When you say normal,
17 tell me what normal is?

18 A. I would just, you know, basic relations between a
19 couple. I mean --

20 Q. What type of things did he ask you?

21 A. Oral sex.

22 Q. Oral sex?

23 A. Uh-huh.

24 Q. Any other kind?

25 A. Anal sex.

1 Q. And did you cooperate in that?

2 A. Yes, sir.

3 Q. At some point did you start refusing?

4 A. Yes, sir.

5 Q. Did at some point the relationship go bad?

6 A. Yes, sir.

7 Q. And why was that?

8 A. I just grew tired of the differences that we had.

9 Q. And at some point did you move back to Virginia?

10 A. Yes, sir.

11 Q. Did you go to Virginia more than once?

12 A. Yes, sir.

13 Q. Did you go as a group each time?

14 A. Yes, sir. Well, we, I went home when I was pregnant
15 with Elizabeth for vacation Easter. I came back. It was
16 just a vacation. Me and Mr. Kirby and our daughter and my
17 two daughters moved to Virginia shortly after I had
18 Elizabeth. And he was there probably a month and that's
19 when I said --

20 Q. And at some point did you come back to Opelika?

21 A. Yes, sir.

22 Q. Okay. And then did you end up going back to Virginia
23 again?

24 A. After that, yes, sir, that was the following summer I
25 went back home.

1 Q. When you went back the following time did he go with
2 you?

3 A. No, sir.

4 Q. Why was that?

5 A. I grew up.

6 Q. Did you want him to go back with you?

7 A. No, sir.

8 Q. And I think you kind of agreed that was the summer of
9 '99. From the time that ya'll first started dating, living
10 together and the rest of it, did you have any indication
11 that he might have been doing something to your daughters?

12 A. No, sir.

13 Q. Have any clue?

14 A. No, sir.

15 Q. At the time you went back to Virginia did you have any
16 hard feelings to the extent that you would create this
17 story?

18 A. No, sir.

19 Q. Did Lillian reveal to the people in Virginia her story
20 before you knew anything about it?

21 A. Yes, sir.

22 Q. How did you find out that Lillian had done this?

23 A. Lillian's school called me at work and told me my
24 daughter would not be riding to school bus home.

25 Q. That she would not be coming home?

1 A. On the school bus. And that I would have to come to
2 the school where they would release her to me.

3 Q. And that's when all this started?

4 A. Yes, sir.

5 Q. During your three or four year period or however long
6 it was that ya'll were together as a family did he ever
7 have the opportunity to be alone with any of the girls or
8 all three when you weren't there?

9 A. Not for a long period of time. Normally, when I would
10 go to the grocery store there was only one time that he was
11 ever left with my kids alone where I did not return home.
12 I went to training for a new job in Birmingham and he was
13 left with my daughters for three days.

14 Q. Okay. So that was the only extended period. On a day
15 to day basis was there a period of time when he would have
16 total access to all three girls?

17 A. In the morning before they went to school.

18 Q. And what hours would that have been, approximately?

19 A. I would say seven to nine or whenever the school bus
20 comes.

21 Q. Were you at work, is that --

22 A. Yes, sir.

23 Q. Where were you working at that time?

24 A. Nichol Texan.

25 Q. What time did you have to be at work?

1 A. I want to say seven, I'm not really certain. I've had
2 many jobs since then and I don't really remember my hours.

3 Q. So roughly you'd have to be there at work at seven and
4 you'd have to leave sometime then. How long did it take
5 you to get there?

6 A. Roughly about twenty minutes, depending on traffic.

7 Q. So 6:30 to twenty of or something?

8 A. Yes, sir.

9 Q. And how long would they be at home with him before
10 they had to go to school?

11 A. Until the school bus came at, I'm going to say, I
12 don't remember what time the school bus came.

13 Q. And that would be on a daily basis?

14 A. Yes, sir.

15 Q. Was there an incident where you had noticed some
16 bleeding from one of the children?

17 A. Yes, sir.

18 Q. And tell us about that?

19 A. I came home from work and had to go into the bathroom
20 after Autumn and I noticed that there was a little bit of
21 blood on the toilet and I asked her what happened and she
22 told me that she got hurt. So I immediately grabbed her
23 and took her to the, her pediatric office and got her
24 checked.

25 Q. And what story did she tell you?

1 A. She told me that she fell on a, she called it a
2 balance beam, but it's not a balance beam, it's a, the
3 little piece of wood that they put in the play ground to
4 block the sand from the grass.

5 Q. Did you go to the school and try to find out what
6 happened?

7 A. I called the school.

8 Q. And what did you find out?

9 A. I found that she had gone to the school nurse and told
10 the school nurse the same story, nobody witnessed her fall,
11 but --

12 Q. And when did she tell this story, before or after you
13 found out?

14 A. Before I found out.

15 Q. Okay. And at the doctor's office did you pass on the
16 same story that she had told to you?

17 A. I did, but I also told the pediatrician that he needed
18 to check my daughter because I live with a man I was not
19 married to and I did not trust people. I didn't trust
20 anybody. I mean, those are my baby girls.

21 Q. And what did they determine at that time?

22 A. That what Autumn said was the truth, that they had no
23 reason to believe --

24 Q. Otherwise?

25 A. -- otherwise.

1 Q. And at sometime did you find out differently?

2 A. Yes, sir.

3 Q. And when was that?

4 A. When Lillie told about the abuse they got Autumn and
5 Lillie to go get an X-ray or a PAP smear and it came back
6 that it wasn't possible that it was a fall, it was an
7 internal injury.

8 Q. Did ya'll have some handcuffs around the house?

9 A. Yes, sir.

10 Q. And what were those for?

11 A. It was a gag gift given from a friend.

12 Q. And did you personally use them or --

13 A. No.

14 Q. Did he know where they were?

15 A. Yes.

16 Q. When did you find out about those being used on the
17 children?

18 A. When the girls, when Lillie and Autumn told what
19 happened all of this came out at the same time.

20 Q. Who used to discipline the children?

21 A. Lee.

22 Q. Was there, did you notice any injuries to the kids?

23 A. You would notice belt marks when he would spank them
24 and --

25 Q. Would you confront him about that?

1 A. Yeah. He would -- after I told him that I was
2 noticing marks he changed the way, it wasn't as severe of
3 a spanking.

4 Q. Did the children appear to get along with him?

5 A. Yes.

6 Q. Were they in any way afraid of him?

7 A. They acted different around him.

8 Q. And by different what do you mean?

9 A. Children have a certain way that they behave and when
10 he would come into the room they were like little robots,
11 they would sit and they would sit up straight and they
12 would say yes, sir and no, sir, yes, ma'am and no, ma'am.
13 And we had, I had taught them that way before I met him
14 that they should say yes, sir and no, sir because it's, you
15 know, it's a polite thing. But it would just change the
16 mood, they would act like different children.

17 Q. Did they appear to be happy when he was in the room?

18 A. Some of the time, yes.

19 Q. Nothing further.

20 THE COURT: Cross.

21

22

23

CROSS EXAMINATION

24 BY MR. FUNDERBURK:

25 Q. All right. You say that you were gone three days to

1 Birmingham?

2 A. Yes, sir.

3 Q. Do you recall what year that was?

4 A. The year before I left.

5 Q. All right. You left in 1999?

6 A. I believe that was the year, yes, sir.

7 Q. And the year before you left would have been 1998?

8 A. Yes, sir.

9 Q. And so the only time you can recall during those two
10 years, '98 and '99, that you might have been away from the
11 house working were three days when you went to Birmingham?

12 A. Out of the state, and I didn't come home to my
13 children, yes. I gave birth to my daughter, however I
14 believe we left my daughters with his aunt.

15 Q. All right.

16 A. I believe that Mr. Kirby was with me at the time.

17 Q. For three days you were away?

18 A. Yes, sir.

19 Q. Otherwise you were at home?

20 A. Other than when I was working, yes, sir.

21 Q. Well, during that period of time after your daughter
22 was born did you work all the time or not?

23 A. I'm sorry, I don't understand what you're asking.

24 Q. I'm asking you if you worked all the time or not when
25 you gave birth to Pookie, after you gave birth to Pookie?

1 A. I had a job, yes. I don't recall if I had a full time
2 job or not. I had several jobs.

3 Q. All right.

4 A. After giving birth to Elizabeth.

5 Q. Well let me ask it this way: Who worked more, you or
6 Lee?

7 A. Mr. Kirby did during a certain time.

8 Q. During 1998 when all this was supposed to have
9 occurred, when Lillian was in the second grade, isn't it
10 true that Mr. Kirby had two jobs?

11 A. I can't -- I'm not certain if he had two or one. I
12 know he was working for Radio World or Jimmy's Car Stereo,
13 one or the other, and I don't know if he was still at the
14 mill or not. I don't know.

15 Q. Well, would it help you if I gave you some information
16 from the mill showing he was working there in all of '98
17 and '99?

18 A. Okay. Like I said, I don't know, sir.

19 Q. All right. So he would have had at least two jobs,
20 didn't he? He worked at the mill on the second shift,
21 didn't he?

22 A. Yeah, he did at one time, yes, sir.

23 Q. Worked at the mill on the second shift and then when
24 he wasn't at the mill he worked with the radios, installing
25 radios?

1 A. During the daytime, yes, sir.

2 Q. And both of those jobs were away from the house?

3 A. Yes, sir.

4 Q. And you worked just off and on?

5 A. No, during that time I worked for Nichol Texan.

6 Q. All right.

7 A. During the last year that I was here I started working
8 for Nichol Texan and I had a steady job for that period.

9 Q. It was 1999 or 1998?

10 A. I would say that I started in October, I don't
11 remember the year, and I went to a three day course and
12 then I started here in Auburn.

13 Q. Where were you working when this injury occurred to
14 Autumn?

15 A. I believe I was still at Nichol Texan.

16 Q. And you were working there during the day or at
17 nighttime or what?

18 A. During the day.

19 Q. Okay. What time does the school bus come to pick the
20 children up?

21 A. As I've already stated, sir, I don't recall what time
22 the school bus came to get the girls.

23 Q. Well, who got them ready for the school bus?

24 A. Most of the time in the morning I would wake them up
25 before I left.

1 Q. All right.

2 A. And then Lee would make sure that they got on the bus
3 for me.

4 Q. And that would be routinely you would wake them up
5 before you left for school --

6 A. Most of the time.

7 Q. -- left for work?

8 A. Depending on what time I had to be at work, yes, sir.
9 If I had to be there early Lee would get them up for me
10 when it was time for them to get up. I wasn't going to
11 wake my children up unnecessarily.

12 Q. Okay. And so at night the whole time he was working
13 at the mill he was on second shift and do you recall what
14 time the second shift was?

15 A. No, sir.

16 Q. It was mostly at night though, wasn't it?

17 A. Yeah, I believe.

18 Q. And I understand now that the whole time you were here
19 in Opelika and you had one child in school that you can't
20 recall what time the school bus arrived?

21 A. Sir, this was years ago. This was years ago. No, I
22 cannot recall when the school bus left, sir.

23 Q. Being clear to you, you got them ready, you got them
24 out of bed and got them ready for school and then Lee got
25 them on the bus?

1 A. I said most of the time, yes, sir, I did.

2 Q. And a good deal of the time you were there, in fact
3 you were not working a good deal of the time during '98 and
4 '99?

5 A. I was working for Nichol Texan.

6 Q. All right. Now do you recall -- well, you don't
7 remember when though, do you?

8 A. I remember it was shortly after school started and I
9 believe they closed down in, I want to say May.

10 Q. Of which year?

11 A. It would have been, if I went home in 2000 it would
12 have been, I went home in the summer of '99, I'm sorry. It
13 would have been May of '99.

14 Q. Now do you recall how many days, how many times you
15 had to call the doctor about Autumn bleeding from the
16 vagina area?

17 A. No, I just took her that one time, sir.

18 Q. Did you call in other times to see, make a report?

19 A. After that happened or before that happened, sir?

20 Q. No, after it happened?

21 A. I might have called in to ask about the progress, if
22 she should still be having as much problem as she was
23 having.

24 Q. All right. Here is a nurse's note that says mom
25 states -- go ahead and read it and then I'll ask you a

1 question.

2 A. Okay.

3 Q. Do you agree that on March 7 of '99 the mom states the
4 child fell on a balance beam Friday and has had some
5 vaginal bleeding ever since, do you recall telling the
6 nurse that?

7 A. No, sir.

8 Q. You think the nurse just made it up or you just don't
9 recall?

10 A. Sir, I didn't say she made anything up. You asked me
11 did I recall telling her that and I'm giving you an honest
12 answer, no, sir, I do not recall calling the doctor and
13 telling her that about my child.

14 Q. All right. Now, the place you took the child was to
15 the Pediatric Clinic?

16 A. Yes, sir.

17 Q. The same place Dr. Anz works? Do you know Dr. Anz?

18 A. Yes, sir. Yes, sir.

19 Q. And you saw a doctor at that clinic and told that
20 doctor to check your daughter out because you didn't trust
21 anybody?

22 A. Yes, sir. I told her that my daughter was bleeding
23 and that she needed to be checked.

24 Q. And the doctor at that time checked your daughter out
25 carefully, didn't he, like you asked him?

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1 A. Sir, I was not in the room.

2 Q. Well, you assumed that the doctor did his job because
3 you asked him to check your daughter carefully because you
4 didn't trust anyone?

5 A. I asked him to check my daughter, yes, sir. If he did
6 his job, I don't know, I was not in the room.

7 Q. Well, the word you used was that you asked the doctor
8 to check your daughter carefully because you didn't trust
9 anyone, now isn't that what you told the doctor?

10 A. Yes, I said she needed to be checked carefully.

11 | Q. Uh-huh.

12 A. That she's bleeding, she's a five year old child in
13 kindergarten, she should not be bleeding, that she needed
14 to be checked because at five she should not be bleeding.

15 Q. Yes, and after the doctor checked that he concluded
16 that that was a straddle injury?

17 | A. Yes, he did.

18 Q. Now let's see, on the 4th, excuse me, on the 8th --
19 let me drop back because these are not in order.

20 Now this is from the doctor's records, phone
21 consult. Says, this is what they note that you said: Fell
22 on play ground on Wednesday at school. Now that report is
23 on March 5, do you see that?

24 A. Uh-huh. (Affirmative response.)

25 Q. And so if she fell on Wednesday at school that would

1 have been March 3, right?

2 A. If that's marked March 5 and it says Wednesday, then
3 Wednesday would be March 5th.

4 Q. Well, I believe March 5 was a Friday.

5 A. Okay.

6 Q. And I'll show you a calendar. It says March 5 was a
7 Friday. And the Wednesday would have been two days before
8 that which was the 3rd. And it says here her mom noted
9 blood on toilet seat and on her panties this morning. So
10 that would have been the morning of the 5th which would
11 have been Friday, two days after the injury at school.

12 A. Uh-huh. (Affirmative response.)

13 Q. A bruise was noted in the vaginal rectal area. Then
14 on the next note, we've already gone over the nurse's note
15 where you called on the 7th. And the next note is on
16 Monday, March 8th, which would be, if the injury occurred
17 on the 3rd, that would be about six days if you count them
18 off, five or six days. And can you read that where she
19 still is bleeding on the 8th?

20 A. Okay.

21 Q. That's what it says, isn't it?

22 A. Yes.

23 Q. So how much longer did she bleed after the 8th from an
24 injury that the doctor found to be a straddle injury that
25 occurred on the 3rd of March?

1 A. I have no idea, sir, that's why I called the doctor
2 because she was still bleeding.

3 Q. But you don't recall how much longer thereafter she
4 bled?

5 A. No, sir.

6 Q. Now you recall making a statement during some of these
7 interviews that your relationship with Kirby was more like
8 roommates?

9 A. At times, yes.

10 Q. And not as you've described it, but more like
11 roommates? That's right, isn't it?

12 A. We, we did not live like a married couple.

13 Q. All right. Did you ever see any bruises on Autumn's
14 neck?

15 A. Not to my knowledge.

16 Q. Did you ever see any bruises on her wrist where
17 handcuffs may have been placed?

18 A. Not to my knowledge.

19 Q. And the discipline of these two children who were his
20 stepchildren that was up to Lee, wasn't it, and not you?

21 A. Yes, sir.

22 Q. Because you didn't take any responsibility for their
23 discipline, did you?

24 A. No, sir, I did discipline my children, however when we
25 were living together it was hard for one of us to

1 discipline the children one way and one of us to discipline
2 them the other way.

3 Q. And in fact, when ya'll, when you and the girls,
4 including Pookie, Pookie is his child, right?

5 A. Yes, sir.

6 Q. Moved from down here actually the children moved in
7 with your stepmother?

8 A. No, sir, we all lived together.

9 Q. Well, do you recall when this matter came up on the
10 13th of March of this year, did you go to the Dr. Starling
11 with the stepmother and talk to that doctor about the
12 social history? Were you with Ms. Hepner during that
13 conversation?

14 A. I don't know if I was with her or not.

15 Q. Would you be surprised that in the social history it's
16 noted that Ms. Hepner states that she has concern with you
17 and feels the girls needed the stability and support that
18 she could provide? Does that surprise you any?

19 A. No.

20 Q. Because in fact, what was going on, what has been
21 going on for some time is your stepmother has been trying
22 to get custody of these children; isn't that true?

23 A. No.

24 Q. Do you know what she might have been talking about,
25 that somehow you did not provide the stability with the

1 care of these children?

2 A. No.

3 Q. And how long have the children not lived with you?

4 A. For the last couple of months, about, I don't know,
5 I'm trying to think of exactly when I moved out.

6 Q. Did you move out when you got married?

7 A. Yes, sir.

8 Q. And when was that?

9 A. March 31st.

10 Q. Now you recall when Lee came to see Pookie in January
11 this year, January 28, I believe, do you recall that?

12 A. Yeah, he did come this year, yes, sir.

13 Q. And did he get to see Pookie?

14 A. Yes, sir.

15 Q. And did he bring his new wife with him?

16 A. Yes, sir.

17 Q. Do you recall giving her some dirty looks?

18 A. No, sir.

19 Q. Did you get along with her real well?

20 A. I don't, honestly I've spoken to her just the one time
21 that she came with Lee.

22 Q. Well, tell us what happened and how ya'll got along
23 when Mr. Kirby came up there on the 28th of January?

24 A. What do you want to know exactly?

25 Q. What ya'll did, who was there?

1 A. We all met at, we met in the mall, it was Mr. Kirby,
2 his wife, Elizabeth, me, Autumn, Lillie, Princess and my
3 father.

4 Q. Everything go all right? The girls have a good time?

5 A. Yeah, they seemed to have a really good time with him.

6 Q. Now you recall then after that trip, after January
7 28th when he came up to see Pookie, he hadn't seen her for,
8 what, two years?

9 A. I guess it could, yeah, it could have been about that
10 long.

11 Q. Now immediately after then or very shortly after then,
12 about two months, actually less than two months, after that
13 you filed a petition for support, didn't you?

14 A. No, this petition had been filed long before that.

15 Q. Do you recall what date you signed it?

16 A. The first one through child support enforcement in the
17 State of Virginia was signed the summer that I went down
18 there in July.

19 Q. Of this year?

20 A. No. Of this year that I first went down there. They
21 could not find Mr. Kirby because Mr. Kirby did not have
22 employment at the time. Or excuse me, he was working under
23 the table at the time.

24 Q. All right. Well, they knew the address because he
25 hadn't moved, had it?

1 A. No, and they had the address, yes, sir.

2 Q. And well you signed this in July of this year, didn't
3 you?

4 A. Yes, that's when they finally got record of him having
5 an actual employment where they could take the money from
6 his paycheck, yes, sir.

7 Q. Well, it looks like they confirmed his address on
8 March 6th of this year? See that date?

9 A. Yes, sir.

10 Q. And that's less than, about thirty days after he was
11 up here seeing his daughter, up in Virginia seeing his
12 daughter?

13 A. And if you go back and you go through the files there
14 will be a record of me filing for child support July the
15 year I got down there, sir.

16 Q. Well, nonetheless, you saw what I just saw and what I
17 just showed you?

18 A. Yes, sir. That's when they finally found him, yes,
19 sir.

20 Q. And it was at this same time shortly after he came up
21 to see Pookie that these charges were filed in this case,
22 about the same time?

23 A. Yes, sir.

24 Q. That's right, isn't it?

25 A. Yes, sir.

1 Q. And of course, you've talked to the girls about this,
2 haven't you?

3 A. I told them that they don't need to be afraid anymore,
4 that they needed to speak honestly. We don't talk about
5 the case itself because we were advised not to discuss this
6 with the children.

7 Q. Yes, ma'am, and now you did talk to Lillian about the
8 fact that her statement, you have seen her statements that
9 she's made? You've seen the statements she's made to
10 various social workers?

11 A. As far as like reading the statements themselves, I
12 don't recall reading any statements from anybody, sir. I
13 know what counselor told us and the stuff the, I'm trying
14 to think of the exact group that showed us stuff, but I
15 don't remember seeing actual, I don't believe we were ever
16 allowed to see the actual papers themselves of what the
17 children had said.

18 Q. Well, you did talk to Lillian about the fact that
19 Lillian had stated that all this stuff happened to her at
20 night. In fact she said all of this happened to her and
21 Autumn at night when Lee would come in and wake them up.
22 And she thought you were on the night shift. Now you
23 recall talking to her about that, don't you?

24 A. She asked me did I work at K-Mart and I told her no,
25 I did not work at K-Mart.

1 Q. Ma'am, you're telling the jury that you never told the
2 child that you didn't work at night, therefore this could
3 not have happened at night?

4 A. I'm telling the jury that my daughter asked me did I
5 work at K-Mart and I told her during that time no I did not
6 work at K-Mart. I worked at Nichol Texan.

7 Q. All right. Well, when did she , when did ya'll talk
8 about whether you worked at night or whether you didn't
9 work at night?

10 A. When she asked me.

11 Q. And when was that?

12 A. When we were coming back from Alabama one time, sir,
13 she asked me, she said, mommy, you worked at K-Mart during
14 this time, and I said no, honey, you're wrong, mama worked
15 at Nichol Texan during this time. The last trip that we
16 came down here I did not work at K-Mart but for a very,
17 very short time because I kind of relocated from Virginia
18 to here from one K-Mart to another. I worked there for a
19 very short time, started going to school, and then started
20 working at Nichol Texan.

21 Q. So ya'll didn't talk about that this time?

22 A. I'm sorry, this --

23 Q. You just told me that you talked about that last time.

24 A. I said one of the trips coming back, sir.

25 Q. Which one?

1 A. Sir, I don't recall.

2 Q. What about this one, this trip, this time?

3 A. One we just made to come here now? We haven't
4 discussed anything. We just discussed that they don't have
5 to fear anybody, that everybody here loves them and that
6 all they have to know is that telling the truth is the best
7 thing, they don't have to lie about anything. They need to
8 be honest.

9 Q. Well, you think that Lillian and Autumn were
10 discussing this problem with whether this happened at the
11 nighttime or at the daytime because Lillian gave a
12 statement this always happened at night and Autumn gave a
13 statement it always happened during the day? If Lillian
14 thinks that may have been discussed this time that Lillian
15 is just mistaken on when that discussion took place?

16 A. I'm sorry, I didn't understand -- I don't understand
17 what you're getting at.

18 Q. Well, ma'am, I believe the best I can recall the
19 testimony that Lillian and Autumn discussed this problem,
20 that Lillian gave statements that this happened when
21 William would wake them up at night, and she thought you
22 were on the night shift. And she and Autumn talked and
23 Autumn said all this happened to her during the daytime.

24 A. Well, then you would need to ask them, sir. I'm not
25 Lillian and I'm not Autumn. I can't tell you what they've

1 discussed.

2 Q. Well, what I'm asking you is did you discuss with them
3 that this couldn't have happened at night because number
4 one, you would have been there, and number two certainly
5 you would have been there and obviously Lee couldn't have
6 been there because he worked the second shift? Ya'll
7 didn't discuss that?

8 A. Not to my knowledge, no, sir.

9 Q. Now one of the things you are aware of because I
10 believe the doctors indicate they may have talked to you, -
11 -

12 MR. GLANZER: Judge, if it's --

13 MR. FUNDERBURK: I'll rephrase that, so we don't
14 have a problem.

15 Q. I'm going to ask you this way: You have, well you've
16 talked to Dr. Anz, or have you?

17 A. Yes, sir.

18 Q. And did Dr. Anz examine Lillian?

19 A. No, sir.

20 Q. Who examined Lillian?

21 A. The forensic specialist in the State of Virginia.

22 Q. Is that person a doctor?

23 A. To the best of my knowledge they are.

24 Q. And that person talked to you?

25 A. No, they talked to my stepmother, I was working.

1 Q. Oh, okay. They didn't talk to you at all. And do you
2 know why Lillian was not examined by Dr. Anz and Autumn
3 was?

4 A. Autumn had more injuries.

5 Q. Well, as a matter of fact you know that Autumn, that
6 Lillian had no abnormal findings in the anal or vaginal
7 area, you are aware of that?

8 A. Autumn had more severe injuries, stuff that could be
9 noted by a doctor, yes, sir.

10 Q. Well, the answer to my question, you know that Lillian
11 had no findings of an abnormal anal or vaginal area, you
12 know that?

13 A. Yes.

14 Q. And you know that Autumn had no abnormal findings in
15 the anal area, you know that?

16 A. No, I did not know that.

17 Q. Nobody ever told you that?

18 A. No. I knew that Autumn had major damage done to her
19 vaginal area. I didn't know about the anal area or not.

20 MR. GLANZER: Judge, we would object to her
21 reading that hearsay report, but we'd be glad to offer
22 it into evidence.

23 MR. FUNDERBURK: I'll offer it as evidence. We'd
24 like to have --

25 MR. GLANZER: It's not marked.

1 THE COURT: Get it marked.

2 MR. GLANZER: Which one, Lillian or Autumn?

3 MR. FUNDERBURK: Well, the one I'm looking at is
4 Autumn.

5 MR. GLANZER: Okay. The State would offer
6 Lillian also.

7 MR. FUNDERBURK: Okay.

8 THE COURT: Get the document marked before you
9 offer it and tell me what you're offering so I'll
10 know, gentlemen.

11 All right. Let's take a recess. Ladies and
12 gentlemen, we'll let you take a short recess and we'll
13 go for a little while longer before we quit for the
14 day. I'll let you step out to the jury room.

15 (WHEREUPON, proceedings were in a brief
16 recess, after which the following occurred,
17 to-wit:)

18 (WHEREUPON, the documents hereinabove
19 referred to were marked for identification
20 as State's exhibits numbers five and number
21 six.)

22 THE COURT: All right. What are you offering
23 State's five and six?

24 MR. GLANZER: Yes, sir.

25 THE COURT: Admitted.

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1 (WHEREUPON, the instruments hereinabove
2 marked for identification as State's
3 exhibits numbers five and number six were
4 admitted and received into evidence.)

5 THE COURT: Okay. Everybody ready for the jury?

6 MR. FUNDERBURK: We are, Your Honor.

7 (WHEREUPON, the jury returned to the
8 courtroom and the following proceedings
9 were had and done in its presence and
10 hearing, to-wit:)

11 THE COURT: Okay. You may proceed.

12 CROSS EXAMINATION RESUMED BY MR. FUNDERBURK:

13 Q. Have you ever read medical reports? If I just hand
14 them to you would you know what you were looking at?

15 A. It depends. No, I've never really read deep into
16 medical reports, sir.

17 Q. Let me ask it this way, and feel free to read these if
18 you want to, have you been told by anyone that a physical
19 examination revealed anything abnormal about the anal area
20 of Autumn?

21 A. No, I've never been told one way or the other, no,
22 sir.

23 Q. You have been told and you understand that as to
24 Lillian she had no abnormal findings at all, that is the
25 rectal and the vaginal areas were normal?

1 A. Yes, sir.

2 Q. After you moved to Virginia it would have been in
3 1999, it would have been after these medical reports I just
4 went over with you, the one where you took Autumn to the
5 Pediatric Clinic?

6 A. Yes, sir.

7 Q. Would it have been the same year?

8 A. Yes, it would have been the summer.

9 Q. In '99. Now did Autumn go up earlier than Lillian?

10 A. Yes, sir.

11 Q. She went up what, in May?

12 A. When school ended, yes, sir. And Elizabeth did.

13 Q. Now Elizabeth is Pookie, right?

14 A. Yes, sir.

15 Q. And they went up and stayed with their grandmother or
16 step grandmother?

17 A. And grandfather, yes, sir.

18 Q. And that Princess, what's her name?

19 A. Princess Hepner.

20 Q. And you stayed here living with Mr. Kirby?

21 A. Yes, and Lillian.

22 Q. With Lillian?

23 A. Yes, sir.

24 Q. And that would be the summer of 1999?

25 A. Not the full summer but part of the summer, yes, sir.

1 Q. And from that point you moved to Virginia?

2 A. Yes, sir.

3 Q. Now since that time when you went to Virginia sometime
4 in the summer of '99 have you been in contact with Mr.
5 Kirby?

6 A. Only when I first got there -- yeah, we were in
7 contact for a while and then he got into a car accident and
8 we were non-contacted and of course we were in contact
9 again.

10 Q. When is the last time that you talked to him before,
11 when is the last time you talked to him?

12 A. On my way home from one of the trips from Alabama.

13 Q. Okay. Would that have been in June or July of this
14 year?

15 A. I'm sorry, I don't know which month it was. It was on
16 the way home from one of these trips.

17 Q. And one of these trips means when you came down here
18 to talk to the authorities down here?

19 A. Yes, sir.

20 Q. One of those was, statements were taken in June, do
21 you think it would have been at that time or a later time?

22 A. Like I said, I can't give you dates because I'm not
23 certain of the date.

24 Q. All right. But after you came here and talked to the
25 authorities you got back to Virginia and you called him?

1 A. No, sir. I called him on the way home from Alabama.

2 Q. Did you talk to him?

3 A. Yes, sir.

4 Q. And tell me what ya'll talked about?

5 A. I asked him could he send me a Bible that I had left.
6 I had left a lot of stuff behind when I moved out and I
7 asked him could he send, please send me my Bible and he
8 said that he had it in a package for me and that he would
9 send it. And he again asked if we couldn't try one more
10 time to be a family.

11 Q. Is that it?

12 A. Yes, as far as I know.

13 Q. You called him and no discussion about any kind of
14 abuse or any kind of, you didn't accuse him of doing
15 something wrong to your children, did you?

16 A. No, sir, we were told that we were not allowed to
17 discuss it.

18 Q. Ma'am, did you accuse him of doing anything wrong in
19 that conversation where you called him?

20 A. No, sir.

21 Q. You just called him and asked for the Bible?

22 A. Yes, sir.

23 Q. And did he send it?

24 A. No, sir.

25 Q. Now prior to that, let's do it this way, after he was

1 there in January up until sometime on one of your trips
2 down here, probably in June or July, did you talk during
3 that time?

4 A. A few times.

5 Q. Did he call you or did you call him?

6 A. He called me and I think I returned a call.

7 Q. And did you call him?

8 A. I believe I returned calls, yes, sir.

9 Q. And what did ya'll talk about during that time?

10 A. Again he asked if I would come back. And we
11 discussed, I mean, just things that would have to change.
12 I mean, we just discussed --

13 Q. Well, tell me what ya'll said?

14 A. I don't recall the whole conversation, sir.

15 Q. What was it that had to change that you told him had
16 to change?

17 A. That we had to get along better. We had, I mean, I
18 wasn't going to keep living that way with my children. And
19 at this time we did not know about the abuse.

20 Q. Are we talking about the time --

21 A. After --

22 Q. -- between him seeing you in January and you coming
23 here sometime this summer?

24 A. After I found out about the abuse I believe I spoke to
25 Mr. Kirby twice. Once he called my work and I told him I

1 could not talk to him because I was working. And once he
2 called my house and I told him I could not talk to him,
3 that I was sleeping, I had to work the next day.

4 Q. Somewhere in there ya'll were talking about what would
5 happen if you went back together?

6 A. Yeah, before he came --

7 Q. Is that right?

8 A. -- before he came down, yes, sir.

9 Q. Was that before you got married?

10 A. Yes, sir. And that was before I found out about he
11 was married, yes, sir.

12 Q. Ma'am, you knew when he had his wife up there in
13 January that he was married, didn't you?

14 A. And as I said these conversations were before he came
15 down here, sir.

16 Q. Talking about, I think I asked you about when he came
17 to Virginia.

18 A. Okay. I got confused. That's my fault. I'm sorry.
19 I was talking when Mr. Kirby and I were talking it was
20 before he came to Virginia. After he came to Virginia as
21 I stated before I spoke to him I believe twice. Both times
22 I told him that I could not speak. And then I did call him
23 on the trip back from Alabama and ask could he please send
24 my Bible.

25 Q. So when were you talking to him about going back

1 together about if he changed, whatever it was you wanted
2 changed?

3 A. This is Christmas before he came down here.

4 Q. When you say came down here, what do you mean?

5 A. Well, down, up to Virginia. I'm sorry.

6 Q. During the year 1999 from January until you went to
7 Virginia can you tell me one place that you were working at
8 for sure?

9 A. You mean while I was in Alabama?

10 Q. From 1999 up until you moved to Virginia.

11 A. I was working at Nichol Texan.

12 Q. Where is that?

13 A. That was in Auburn.

14 Q. That was a full time job?

15 A. Yes, sir.

16 Q. And when did you leave there?

17 A. When they shut down.

18 Q. And when was that?

19 A. I don't recall the date, sir.

20 Q. Was it before you went to Virginia?

21 A. Yes, sir.

22 Q. And what were your hours?

23 A. As I've stated before, sir, I don't recall the exact
24 hours that I worked there.

25 Q. And you don't recall whether Mr. Kirby worked on the

1 second shift or the third shift either, do you?

2 A. Not during that time, no, sir. We both kind of went
3 through a lot of jobs during the last year, two years.
4 He'd go between Radio World and Jimmy's Car Stereo and the
5 mill.

6 MR. GLANZER: Judge, if he's about to show
7 employment records belonging to some other
8 organization --

9 THE COURT: Step up here if you've got something
10 to say.

11 (WHEREUPON, the following proceedings were
12 had and done at the bench, in the presence
13 of the jury but out of its hearing, to-
14 wit:)

15 THE COURT What now?

16 MR. GLANZER: He has a question to her about his
17 employment and he's pulling out a record. I have no
18 knowledge what it is. What I suspect is that it's
19 from a third party which would be hearsay.

20 MR. FUNDERBURK: I'm just going to ask her to see
21 if it refreshes her recollection, but I'm not going to
22 put it in.

23 THE COURT: Okay. All right. If that's an
24 objection, overruled.

25 (WHEREUPON, the following proceedings were

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1 had and done in the jury's presence and
2 hearing, to-wit:)

3 CROSS EXAMINATION RESUMED BY MR. FUNDERBURK:

4 Q. Ma'am, I'm going to show you this and just read it and
5 see if that will help your recollection. It doesn't help
6 your recollection?

7 A. As I stated he was working for the plant. I don't
8 recall when he was working for them. And he was also
9 working for Jimmy, in between Jimmy and Jackie's Place.

10 Q. In fact, during all of '98 and '99 he had two jobs,
11 didn't he?

12 A. Sir, as I've stated many times before I don't recall,
13 I know that he had two jobs while we were together, yes.
14 I don't recall when he had the two jobs, sir.

15 MR. FUNDERBURK: Your Honor, I believe those are
16 all the questions I have.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION

19 BY MR. GLANZER:

20 Q. Was there any period where he had no job?

21 A. I believe there was a short time where he was actually
22 not employed, he was making boxes at home for cars. But
23 that's not considered employment.

24 Q. So I guess the question is, is there any time in which
25 he was alone with the three girls?

1 A. The only time I recall is the three days that I went
2 for training in Birmingham, yes, sir.

3 Q. Not days on end.

4 A. Okay.

5 Q. I'm talking about if you went to the store, if you
6 left early to go to work, if you came home --

7 A. He was always left with them when I left. He was the
8 only other person there.

9 Q. So it's possible every day --

10 A. Yes, sir.

11 Q. -- he was alone with the three girls?

12 A. Yes, sir.

13 Q. Or some combination thereof?

14 A. Yes, sir.

15 Q. When you applied for the child support as soon as you
16 got to Virginia in the summer of '99 you indicated that he
17 was unemployed and nothing happened?

18 A. Yes, sir, unless he --

19 Q. Obviously you can't make him pay it, is that correct?

20 A. Exactly.

21 Q. Was the child support for all the children?

22 A. No, sir. It was just for Elizabeth.

23 Q. Just his child?

24 A. Yes, sir.

25 Q. Okay. Which is his child?

1 A. Yes, sir.

2 Q. Did he ever say he wouldn't pay the child support?

3 A. No, sir.

4 Q. If he had a job? Did you eventually get income
5 withholding?

6 A. I believe that's what they -- I believe that's what
7 she's getting now, yes, sir.

8 Q. Still don't have -- he hasn't paid anything yet,
9 though?

10 A. Yes, sir, actually he paid all the way up until last
11 week. He missed last week's payment. He made like four
12 payments or five payments so far.

13 Q. So there's no dispute about it?

14 A. No, sir.

15 Q. Okay. And you indicated that when he came to Virginia
16 in January of this year, 2001, he was married?

17 A. Yes, sir.

18 Q. And the reporting didn't occur until March of 2001;
19 correct?

20 A. Yes, sir.

21 Q. At what point did you get married?

22 A. March.

23 Q. Of 2001?

24 A. Yes, sir.

25 Q. When you talked about getting back together, that had

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1 to be after July of '99 and before January, '01, correct?

2 A. Yes, sir.

3 Q. And was that initiated by you or him?

4 A. Him.

5 Q. Did you have any desire to get back together?

6 A. No.

7 Q. Did you have any desire to punish him for anything?

8 A. No, sir.

9 Q. Prior to March, 2001, did you have any knowledge that
10 your children were abused?

11 A. No, sir.

12 Q. I believe he asked you some questions about, I guess
13 looking at those medical forms and talking about abnormal
14 exam on the anal part and abnormal exam, this one of
15 Lillian, et cetera. Has anybody ever told you that victims
16 of sexual abuse can have normal things?

17 A. Yes, sir.

18 Q. They have? Nothing further.

19 RECROSS EXAMINATION

20 BY MR. FUNDERBURK:

21 Q. Did they tell you that a person on a regular basis
22 now, every day as some of the testimony is, could be
23 penetrated from the rear and there be no physical evidence
24 of that? Has somebody told you that?

25 A. I believe so, yes, sir.

1 Q. Told you that a child can be penetrated from the rear
2 every day and there be no physical evidence?

3 A. That they could be penetrated, I'm not saying every
4 day, I'm saying that they could have been penetrated, yes,
5 sir.

6 Q. And that a child could be, could have sexual
7 intercourse almost every day as these girls have said and
8 there be no physical evidence? You've been told that?

9 A. On my daughter Lillie, yes.

10 Q. Well, some medical person has told you --

11 A. My daughter Lillie was split open at birth, sir. My
12 daughter Lillie did not have the proper vaginal area where
13 she could pee regularly. She had to use a cream to cut her
14 open a little bit more where she would be able to urinate
15 correctly, sir.

16 Q. You're telling me that she had a problem but it had
17 cured itself by the time that the doctors examined her?

18 A. I don't understand what you're saying.

19 Q. Well, are you telling me and this jury that Lillian
20 somehow was penetrated but it healed before the doctors
21 examined her?

22 A. No, sir, I'm not telling you that, I'm telling you
23 that my daughter Lillian at birth already had scar tissue
24 after she was born, she did not have the proper opening for
25 a girl. And when you don't have that they give you certain

1 kind of creams and if the creams don't open the child up
2 then they snip the child open so she can urinate correctly,
3 sir.

4 Q. Well, that's fine, but what I'm asking you is has any
5 of these doctors told you that these girls could be
6 penetrated anally and vaginally repeatedly and there be no
7 evidence of it?

8 A. No, sir.

9 Q. That's all I have.

10 THE COURT: Anything else of this witness?

11 FURTHER REDIRECT EXAMINATION

12 BY MR. GLANZER:

13 Q. Okay. Referring to what he's holding in his hand,
14 would you have any dispute with what's under the assessment
15 area here, a normal exam neither confirms nor excludes the
16 possibility of sexual contact?

17 A. I'm sorry?

18 Q. A normal exam neither confirms nor excludes the
19 possibility of sexual contact, would you disagree that
20 that's not what you were told?

21 A. That is what I was told, sir.

22 Q. Nothing further.

23 THE COURT: Any other questions, Mr. Funderburk?

24 MR. FUNDERBURK: No further questions, Your

25 Honor.

1 THE COURT: All right. You can step down.

2 Lawyers, step up for just a second.

3 (WHEREUPON, the following proceedings were
4 had and done at the bench, in the jury's
5 presence but out of its hearing, to-wit:)

6 THE COURT: Ya'll ready to quit for the day?

7 MR. FUNDERBURK: Fine with me.

8 MR. GLANZER: The doctor is here but --

9 THE COURT: Huh?

10 MR. GLANZER: Dr. Anz is here. I don't know --

11 THE COURT: Okay. We'll take her then.

12 (WHEREUPON, the following proceedings were
13 had and done in the jury's presence and
14 hearing, to-wit:)

15 VOLUME ONE CONCLUDED

C E R T I F I C A T E

STATE OF ALABAMA)

LEE COUNTY)

I, Willie T. Bennett, Official Court Reporter at Opelika, Alabama, do hereby certify that I reported in shorthand the proceedings and testimony in the foregoing styled cause at the time and place stated in the caption hereof; that I later reduced my shorthand notes to typewriting; or the same was done under my supervision; that the foregoing pages beginning with the word "Proceedings", where the same appears in the center of the page, following the style of the case, the caption and the appearances, contain a full, true and correct transcript of the proceedings and testimony as therein set out.

I FURTHER CERTIFY that I have placed in the Court File all of the exhibits offered in said trial in the order offered, which fact is certified to the Clerk of the Court.

I FURTHER CERTIFY that I have on this date notified counsel for the parties of the filing of this transcript in the Office of the Clerk of the 37th Judicial Circuit of Alabama, Law Division.

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THIS 30th day of June, 2002.

Walter T. Bennett
OFFICIAL COURT REPORTER